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978-0-521-03128-8 - Law and Society in the Visigothic Kingdom

P. D. King

Excerpt

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Chapter 1

INTRODUCTION

The historical career of the Visigothic kingdom as a *de iure* autonomous political unit began in that same decade which witnessed the deposition of the last Roman Emperor in the West. When the redoubtable Euric seized royal power in 466 the area under Visigothic domination was little larger than that originally assigned to the barbarians by the treaty which Constantius, chiefly concerned to counter the threat of the *Bacaudae*, had concluded with King Wallia in 418 and by which the Goths had received land in southern Gaul in return for a promise of their federate services.¹ The new king determined upon expansion and opened his offensive in Spain in 468 and in Gaul in the following year. His breach of treaty was attended by outstanding success. When peace was made with the Eastern Emperor in 475 Euric was recognised as the sovereign master of a vast kingdom whose northern boundary was formed by the Loire and whose southern was near, if it had not reached, the straits of Gibraltar: to this was added in 477 Provence, ceded by Odovacer after Visigothic occupation in the previous year.² Thereafter, renowned and feared, Euric enjoyed the role of the mightiest ruler of the West, to whose court at Toulouse there flocked ambassadors and suppliants of many races.³ It was an imposing legacy which he left his successor when he died in 484.

¹ On the significance of the *Bacaudae* see E. A. Thompson, 'The settlement of the barbarians in southern Gaul', *Journal of Roman studies*, XLVI (1956), 65–75, whose case is not met by B. S. Bachrach, *Traditio*, xxv (1969), 354–8. But the single stone of the settlement threatened to kill several dangerous birds: see J. M. Wallace-Hadrill, *The long-haired kings and other studies in Frankish hist.* (London, 1962), pp. 26–9. On the fortunes of the *foedus* after 418 see A. Loyen, *REL*, XII (1934), 406–15, and on the division of lands below, pp. 204–6.

² Details in K. F. Stroheker, *Eurich, König der Westgoten* (Stuttgart, 1937), pp. 80ff., though for the expansion see also R. d'Abadal, *Del reino de Tolosa al reino de Toledo* (Madrid, 1960), pp. 39–47.

³ Sidonius, *Ep.* VIII. 9, Ennodius, *Vita Epifani* 80, 86, 90, Cassiodorus, *Variae* III. 3.

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The independent kingdom thus created owed its existence to what may best be termed the 'nationalist' party among the Visigoths. Throughout the turbulent century since the panic-stricken flight from the Huns and crossing of the Danube into the Empire in 376, there had been apparent a basic divergence of policy towards Rome within the barbarian ranks.¹ Already in 382, we are told, two Gothic chieftains drew their swords after an argument at the dinner-table of Theodosius: the one desired nothing but the extinction of the Empire, the other friendship and alliance between Goth and Roman.² The dichotomy was maintained during the following years. Alaric I fluctuated between the two attitudes.³ Athaulf began by holding to the first but was later won over to the second and allegedly because of this murdered in 415.⁴ His successor, Sigeric, was also a man of peace: it was for this reason that he too was disposed of after a short reign.⁵ In his place the Goths chose Wallia with the deliberate intention of breaking the peace: only force of circumstances compelled him to preserve it.⁶ His successor, Theodoric I,⁷ pursued throughout his lengthy reign a policy characterised by constant hostility towards the Empire to which the Goths were theoretically bound as federates: only once, and then as the result of a direct threat posed to his own dominions by the invading Huns, did he fight loyally alongside his

¹ See R. Gibert, 'El reino visigodo y el particularismo esp.', *EV*, I (Rome-Madrid, 1956), 17–24 (with references also to the pre-entry period), and E. A. Thompson, 'The Visigoths from Fritigern to Euric', *Historia*, XII (1963), 105–26 (though I do not agree that the two sides were the optimates and the rank and file).

² Eunapius, *Frag.* 60, cit. in L. Schmidt, *Gesch. der deutschen Stämme bis zum Ausgange der Völkerwanderung*, I: *Die Gesch. der Ostgermanen* (Berlin, 1910), p. 188.

³ Thompson, 'Fritigern to Euric', p. 111.

⁴ Orosius, *Historiae adversum paganos* VII. 43. 4–6. But Orosius may have assumed the responsibility of anti-Roman feeling for Athaulf's death on the basis of later developments: other sources, though conflicting, show personal motives (see J. Orlandis, *El poder real y la sucesión al trono en la monarquía visigoda*, *EV*, III (Rome-Madrid, 1962), 61–2) and Athaulf's successor followed a policy of peace.

⁵ Orosius, VII. 43. 9. On the slightly different version of *HG* 20 see H. Messmer, *Hispania-Idee und Gotenmythos* (Zurich, 1960), p. 117.

⁶ Orosius, VII. 43. 10: 'Ad hoc electus a Gothis, ut pacem infringeret, ad hoc ordinatus a Deo, ut pacem confirmaret'. Cf. *HG* 21. The terrestrial agent of the divine ordinance was Constantius, who held the Goths in an economic stranglehold: see Thompson, 'Settlement', p. 67.

⁷ I retain the traditional nomenclature, although the king's name is correctly Theodoric: see K. A. Eckhardt, 'Die Nachbenennung in den Königshäusern der Goten', *Festgabe Harold Steinacker* (Munich, 1955), p. 36, n. 3.

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Roman ‘allies’.¹ A similarly anti-Roman policy was followed by his eldest son and successor, Thorismund, and was responsible for his death at the hands of his brothers Theodoric and Frederic.²

The thirteen years from 453 to 466 constitute the period when the influence of the ‘peace’ party among the Visigoths was at its zenith. Hidatius’s designation of Theodoric II in 456 as ‘fidus Romano . . . imperio’ might be applied to him at almost any time of his reign: only during the brief episode of the *coniuratio Marcelliana* and the subsequent war against Majorian does the Gothic–Imperial alliance appear to have been broken, and certainly this does not indicate Theodoric’s hostility to the Empire as such.³ In 454, 456, 457 and again in 462 Theodoric was to be found fighting in support of the Romans: he was even responsible for the elevation of Avitus to the Imperial title in 456 and for his protection thereafter.⁴ No doubt Theodoric thought also in terms of gaining territorial advantage for his Goths: he would in any case have been compelled so to think by the ‘war’ party among them. But everything that we know about the king demonstrates his satisfaction with a state of continued political dependence on the Empire, an attitude reflected in the words put into his mouth by Sidonius:

Roma . . . nil te mundus habet melius . . . Romae sum te duce amicus, principe te miles.⁵

The murder of Theodoric by his bellicose brother Euric was inspired, then, by political discontent as much as by personal ambition, for the attacks almost immediately launched against the surrounding territories, as well as other aspects of Euric’s reign, show the new king to have belonged to that group among the Goths who

¹ Details in Schmidt, *Gesch.*, pp. 233–48. The Goths fighting with the Romans in 446 were probably mercenaries – ‘ad depraedandum’, says Hidatius, *Continuatio chronicorum Hieronymianorum* 134.

² Prosper Tiro, *Epitoma chronicon* 1371: cf. *HG* 30 and Thompson, ‘Fritigern to Euric’, p. 124.

³ Hidatius, 170. For plot and war see C. E. Stevens, *Sidonius Apollinaris and his age* (Oxford, 1933), pp. 40–51, 181–5; further, K. F. Stroheker, *Der senatorische Adel im spätantiken Gallien* (Tübingen, 1948), pp. 55ff.

⁴ Hidatius, 158, 173, 186, 217 etc., *HG* 31ff. Details of the reign in Schmidt, *Gesch.*, pp. 252–9. It was during the campaign of 462/3 that the Goths occupied Narbonne at Imperial invitation and that Frederic was killed.

⁵ Sidonius, *Carm.* vii. 501–12: cf. ib. xxxiii. 70–1 where Theodoric is ‘decus Getarum, Romanae column salusque gentis’.

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favoured war and who looked forward to the day when they would no longer be subject to even nominal Roman control.¹ Such an attitude had its roots in the national self-consciousness of the Goths, in their awareness of themselves as a people separate and quite distinct from the Romans among whom they lived. The obvious racial division, visibly and aurally expressed in dress and language,² was reinforced by the confessional. There can be no doubt of the strength of the Goths' adherence to the Arianism which they had adopted between 382 and 395,³ and characteristic of the first part of Euric's reign was his championship of the heresy and suppression, determined if not bloody, of orthodox Catholicism.⁴ According to Sidonius, the king hated the very sound of Catholic: he appeared more the leader of his sect than of his people. The churches were abandoned, the bishoprics left vacant, and the bishop of Clermont considered that the task had become to keep bound to Rome in faith those territories which had been lost politically.⁵ Such evidence leaves little doubt of Euric's oppression.⁶ That this was primarily motivated by political considerations serves only to confirm the national character of the credal cleavage.⁷ It was precisely because the Goths were Arian that the Roman resistance movement was led

¹ See, among many, Stroheker, *Eurich*, pp. 4–7, E. Stein, *Hist. du bas-empire*, I (Paris–Brussels–Amsterdam, 1959), 388–9, and K. Schäferdiek, *Die Kirche in den Reichen der Westgoten und Suewen bis zur Errichtung der westgotischen katholischen Staatskirche* (Berlin, 1967), pp. 12–13. For Theodoric's murder see Orlandis, *Poder real*, p. 66.

² For the skin-clad Visigoths see Claudian, *De bello pollentino sive gothico* 481–2, and Sidonius, *Ep.* I. 2, and for language C. Sánchez-Albornoz, 'Pervivencia y crisis de la tradición jurídica romana en la Esp. goda', *Sett.*, IX (1962), 143–4, and literature cit. there. Ennodius, 89, 90, shows Euric using an interpreter in the peace negotiations of 475.

³ On the conversion and its date see E. A. Thompson, *The Visigoths in the time of Ulfila* (Oxford, 1966), pp. 78–93, though I see no reason to reject the report of Jordanes, *Getica* 131, that the Goths promised in 376 to adopt Christianity, even if *Getica* 132 is unreliable.

⁴ On Euric and the Catholics see above all Stroheker, *Eurich*, pp. 37ff., and Schäferdiek, pp. 18–31.

⁵ *Ep.* VII. 6. But Euric was not in fact interested in proselytism: see below in text.

⁶ *HF* II. 25 is to be disregarded: Stroheker, *Eurich*, pp. 40ff. Note that Euric, like Constantine before him and Clovis and Sisebut (see *EW* 9) afterwards, regarded his faith as responsible for his successes: Sidonius, *Ep.* VII. 6.

⁷ The political motivation is frequently stressed: see, e.g., G. Yver, 'Euric, roi des wisigoths', *Études d'hist. du MA dédiées à Gabriel Monod* (Paris, 1896), pp. 43ff., K. Voigt, *Staat und Kirche von Konstantin dem Großen bis zum Ende der Karolingerzeit* (Stuttgart, 1936), p. 131, E. A. Thompson in *Nottingham mediaeval studies*, IV (1960), 9.

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by the clergy: equally, it was precisely among these clergy that the Catholic Franks were later to find support.¹ It is difficult to avoid the conclusion that the Goths, living in a predominantly orthodox world, clung so stubbornly to their Arianism in large part because the heresy represented an essential mark of their distinctiveness as a people from the native Romans.² It is hardly likely, anyway, that they maintained their faith as a matter of conviction after due reflection on the relationship of the Persons of the Trinity: the sophistication of thought which characterised those Visigothic scholars at Toulouse capable of arguing the niceties of their belief certainly cannot be attributed to the Goths as a whole.³ Significantly, the Romanophil Theodoric II is reported to have been lukewarm in his Arianism, an adherent ‘pro consuetudine potius quam pro ratione’.⁴ The detestation of the heresy displayed by the Catholic Romans could only have strengthened the Goths in it.⁵ Since Arianism belonged to *Gothia*,

¹ Especially so, as many of the Gallo-Roman nobility had entered the Church, which had therefore become a ‘Rückzugsstellung des Romanentums’ (Stroheker, *Eurich*, p. 51). On the aristocratic background of the fifth- and sixth-century episcopate see idem, *Senatorische Adel*, passim. In my view Stroheker considerably underestimates the influence of religion on the Romans of the time. Sidonius would not have stressed the anti-Catholic character of Euric so strongly unless such an emphasis had corresponded to sentiment among the Romans, at least of his circle. It was religious influence – encouragement by the priest Constantius and the introduction of the rogations of Bishop Mamertus of Vienne – which inspired the resistance of Clermont to the Goths: see Sidonius, *Epp.* III. 2, VII. 1, Stroheker, *Eurich*, pp. 72–3. Similarly, it was the anti-Arian writings of Faustus of Riez which led to his exile after Euric’s conquest of Provence: Stroheker, *Eurich*, p. 58, though doubtful is Schäferdiek, pp. 30–1. In truth, one cannot clearly or profitably distinguish between the political and religious aspects of the struggle. This applies equally to the later Gothic–Frankish conflict.

² See J. Orlandis, ‘El cristianismo en la Esp. visigoda’, *EV*, I (Rome–Madrid, 1956), 4: ‘Para los visigodos... el Arrianismo... había llegado a ser uno de los factores constitutivos de su personalidad’. Catholics were called simply ‘Romans’ by the Goths, according to Gregory of Tours, *Liber in gloria martyrum* 24, 79. Naturally, some Romans in the West were Arians: Salvian, *De gubernatione Dei* v. 14.

³ For Visigothic revisions of the Gothic Bible see Salvian, v. 5ff., and Thompson, *Visigoths in the time of Ulfila*, pp. 149–53. Note also the theological dispute mentioned in Sidonius, *Ep.* VII. 6.

⁴ Idem, *Ep.* I. 2. For a papal letter describing Frederic, Theodoric II’s brother, as *filius noster*, see *Epistolae Arelatenses genuinae* 15, and on the circumstances evoking it, Schäferdiek, pp. 11–12.

⁵ See Wallace-Hadrill, pp. 45–6, and for an example of Catholic hostility Ennodius, 92. Inadmissible is *Vita Viviani* 6, for the life is a sixth-century product based upon the *V. Epifani*: see P. Courcelle, *Hist. littéraire des grandes invasions germaniques*, 3rd edn (Paris, 1964), pp. 339ff.

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Catholicism to *Romania*, Euric was naturally disinclined to ‘Arianise’ the occupied territories.¹

The kingdom which Euric created was the result, then, of Gothic pride and national sentiment, but, paradoxically, its very establishment threatened the continued coherence of the Goths as a people. Dispersed now over a much greater area than before and settled among a subject population by whom they were outnumbered fifty or a hundred to one,² the danger of submersion in the Roman mass was acute. Given this background, it is understandable that Euric should have maintained in force the harsh prohibition of intermarriage between Roman and barbarian standing in the *Codex Theodosianus*³ and that he should have found it desirable to issue a code of laws, the so-called *Codex Euricianus*, for the regulation of his scattered Goths and of their relations with the Romans.⁴ Although Isidore tells

¹ See Schäferdiek, pp. 28–9. The ‘national heresy’ thesis was certainly overstated by E. L. Woodward, *Christianity and nationalism in the later Roman Empire* (London, 1916), passim; see A. H. M. Jones in *Journal of theological studies*, new series, x (1959), 280–98 (though cf. idem, *The later Roman Empire, 284–602* (4 vols, Oxford, 1964), II, 965). But one does not have to project modern nationalist notions back into the past or to underestimate the passions engendered by doctrinal controversies to recognise the likelihood that political hostility to Rome acted as a considerable psychological factor in persuading people of the truth of a certain deviant form of the Roman religion.

² See Stroheker, *Eurich*, p. 109 with n. 81, W. Reinhart, ‘La tradición visigoda en el nacimiento de Castilla’, *Estudios dedicados a Menéndez Pidal*, I (Madrid, 1950), 537. The mass settlement in Spain (in any case restricted to Old Castile) probably took place after Euric’s reign, but garrisons had to be provided, governors appointed and so on.

³ See below, p. 14 with n. 1, and Stroheker, *Eurich*, pp. 119–21.

⁴ I defend the traditional view of the *CE* as a ‘national’ Gothic code (and that of the later *LRV* and *CR* as ‘national’ codes for the Romans and Goths respectively) and argue against the distinct territorialist theses propounded by A. García Gallo, ‘Nacionalidad y territorialidad del derecho en la época visigoda’, *AHDE*, XIII (1936–41), 168–264 (maintained still in idem, *Curso de hist. del derecho esp.*, 7th edn, I (Madrid, 1958), 54–5) and A. d’Ors, ‘La territorialidad del derecho de los visigodos’, *EV*, I (Rome–Madrid, 1956), 91–124 (earlier in *Sett.*, III (1956), 363–408), in my ‘The character of Visigothic legislation’ (unpublished doctoral dissertation: University of Cambridge, 1967), passim. The territorialist notions have received little support outside the peninsula (for which see, most recently, R. Gibert, *Hist. general del derecho esp.* (Granada, 1968), pp. 10ff. (*pro*), L. G. de Valdeavellano, *Curso de hist. de las instituciones esp. de los orígenes al final de la edad media* (Madrid, 1968), p. 177 (*contra*)): but see P. S. Leicht, *RSDI*, xvii–xx (1944–7), 203–7, W. Reinhart, ‘Über die Territorialität der westgotischen Gesetzbücher’, *ZRG.GA*, LXVIII (1951), 348–54 (see also idem, *AHDE*, xvi (1945),

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us that the Goths had previously been ruled by customary law alone, this is certainly an exaggeration:¹ an Eurician law expressly referred to a provision of Theodoric I,² and Sidonius, writing about 470, was able to contrast what he termed the *leges Theodoricianae* with the laws of the Theodosian code.³ But this collection was probably small and composed in the main of measures concerning the division of lands and perhaps some aspects of the internal Gothic regime.⁴ In the new circumstances this was no longer adequate.

The *Codex Euricianus*, described by one whose authority in the field is unrivalled as ‘the best legislative work of the fifth century’,⁵ was Euric’s second great achievement. Probably issued about 476,⁶

704–11), H. Mitteis, *ZRG* cit., pp. 531–2, W. Roels, *Onderzoek naar het gebruik van de aangehaalde bronnen van Romeins recht in de Lex romana Burgundionum* (Antwerp, 1958), p. 9, n. 25, and A. Guarino, *Storia del diritto romano*, 4th edn (Naples, 1969), pp. 611–12. Especially important in criticism are A. Schultze, *Über westgotisch-spanisches Eherecht, mit einem Exkurs: ‘Zur Gesch. der westgotischen Rechtsquellen’*, *Berichte über die Verhandlungen der Sächsischen Akad. der Wissenschaften zu Leipzig, philologisch-hist. Klasse*, xcv (1943), part IV, pp. 105–30, P. Merêa, *Estudos de direito visigótico* (Coimbra, 1948), pp. 199–248, and Sánchez-Albornoz, ‘Pervivencia’, pp. 128–99.

¹ *HG* 35. A possible explanation is that Isidore knew that the *CE* was the first comprehensive body of written laws ruling the Goths (the sense of ‘*Gothi legum instituta scriptis habere coeperunt*’) and assumed the sole previous rule of customary law: see Zeumer, *xxiii*, 440, and for *lex, mos and consuetudo*, *Etym.* II. 10. 1–3, with A. García Gallo, ‘San Isidoro, jurista’, *Isidoriana*, ed. M. C. Díaz y Díaz (Leon, 1961), pp. 137–9. On the whole matter of the pre-Eurician regime see King, pp. 1–25.

² *CE* 277: cf. *CE* 275, 276, and A. d’Ors, *El código de Eurico. Edición, palinogenesia, índices*, *EV*, II (Rome–Madrid, 1960), 196ff.

³ *Ep.* II. 1. But I cannot think that the *ll. Theod.* formed a collection comparable to the *CT*, as does F. Beyerle, ‘Zur Frühgesch. der westgotischen Gesetzgebung’, *ZRG.GA*, *LXVII* (1950), 5: irony, indeed, cannot be ruled out, as Wallace-Hadrill, p. 40, n. 2, observes. That they constituted a *lex Romana* (thus K. von Amira, *Germanisches Recht*, 4th edn by K. A. Eckhardt, I (Berlin, 1960), 20ff.) is unlikely.

⁴ *CE* 327 refers to a *prior lex* concerning intestate succession which is not Roman, despite García Gallo, ‘Nacionalidad’, pp. 201–4: see Merêa, *Estudos*, pp. 209–20, King, pp. 65–70. I am certainly not convinced by the view of G. Vismara, expressed most recently in *Edictum Theoderici*, *IRMAE*, part I, 2b *aa* α (Milan, 1967), *passim* (elaborating earlier remarks in *Sett.*, III (1956), 409–63 = *EV*, I (Rome–Madrid, 1956), 49–89), that the *ET* is identifiable with the *ll. Theod.*: see in criticism P. Merêa, *BFD*, *xxxii* (1956), 315–24, Sánchez-Albornoz, ‘Pervivencia’, p. 155, n. 66, and B. Paradisi, *Bullettino dell’Istituto di Diritto Romano*, 3rd series, VII (1965), 1–47, although F. Merzbacher, *HJ*, *LXXXIX* (1969), 6–10, declares himself in favour.

⁵ E. Levy, *Gesammelte Schriften*, I (Cologne–Graz, 1963), 209.

⁶ See A. d’Ors, ‘*Varia Romana*’, *AHDE*, *xxvii/xxviii* (1957/8), 1164–5.

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it was a lengthy compilation of some 350 clauses, arranged under separate chapter headings.¹ Its sole remains, unfortunately, are clauses 276 to 336 of the original, little more than a sixth therefore, and many of these clauses are in fact almost totally illegible or so fragmentary as to be unintelligible, so deplorable is the state of preservation of the palimpsest which contains them, while others are lacking altogether.² Although some missing laws have been reconstituted on the basis of the closely allied texts of the *Lex Baiuvariorum*,³ and although a recent attempt has been made to supply others from a study of the obviously early laws incorporated in the later Visigothic compilations,⁴ the code as it originally existed must for the most part remain sadly unknown to us. From what survives, however, it is abundantly clear that the Goths had adopted many of the principles and provisions of Roman law.⁵ This is wholly understandable, for of all the barbarian peoples they had been longest in contact with Roman civilisation, and the influence of Roman private law had doubtless had its effect upon them, as the

¹ Stroheker, *Eurich*, p. 95, n. 24, puts the number of clauses at between 350 and 400, although d'Ors, *Código*, p. 50, considers 350 a maximum figure. Three chapter headings are extant, and two others clear enough from the surviving fragments: others, conjectured and justified by d'Ors, *Código*, passim, are listed on his pp. 54–5.

² On the palimpsest see E. A. Lowe, *Codices latini antiquiores*, v: *France, Paris* (Oxford, 1950), p. 31, and for its discovery and early use R. de Urcña, *La legislación gótico-hispana* (Madrid, 1905), pp. 27–31. It was the work of, above all, Zeumer, xxiii, 434–64, to establish that it contained Eurician law.

³ Zeumer, *LV*, pp. 28–32. *CE* 274 and 275 are also reconstructed with the help of the Bavarian law.

⁴ D'Ors, *Código*, passim.

⁵ There is virtual unanimity on the highly Romanised character of the *CE* and the view of E. Heymann, *ZRG.GA*, lxxiii (1943), 363, that the Roman elements are 'nur Modifikationen und Ergänzungen des Gotenrechtes' (cf. now also O. Perrin, *Les burgondes* (Neuchâtel, 1968), p. 48, speaking of customary laws) is assuredly to be rejected. But this Roman impregnation is not an argument in favour of territoriality, as Levy, *Schriften*, p. 307, points out: see also King, pp. 47–9. On Roman elements in the (national) *Lex Burgundionum* (*LB*) see A. von Halban, *Das römische Recht in den germanischen Volksstaaten*, part 1, *Untersuchungen zur deutschen Staats- und Rechtsgesch.*, ed. O. Gierke, lvi (Breslau, 1899), pp. 284ff. They were not entirely absent from Frankish law: see J. Gaudemet, 'Survivances romaines dans le droit de la monarchie franque du V^{ème} au X^{ème} siècle', *Tijdschrift voor rechtsgeschiedenis*, xxiii (1955), 149–206, especially 161ff. (legal sources), 177ff. (practice), 205. Visigothic hostility to Rome was political, not cultural, and even Theodoric I had his son, the future Theodoric II, taught Roman law and literature by Avitus: Sidonius, *Carm.* vii. 495ff. Roman jurists, of course, produced the *CE*: for Leo of Narbonne and Marcellinus see Beyerle, pp. 6–8.

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result of the activity of Roman traders, even before the entry of 376,¹ and much more so since then.² But the Roman character of the code can easily be exaggerated,³ particularly since most of the extant provisions deal with transactions – precisely the field where Roman models are most likely to have been followed.⁴ The notions of vulgar Roman and Germanic law not infrequently coincided, so that the discovery of a Roman parallel to an Eurician measure is not necessarily the discovery of the law's source.⁵ At the same time there were certain Eurician laws which were exclusively Germanic,⁶ and others again which, although not Germanic, departed radically from the current Roman law found in the *Codex Theodosianus* and in the writings of the jurists.⁷ The law of the Eurician code was, in fact, *sui generis*.

Euric's achievements were highly impressive, and it may be that in the hands of a strong successor the kingdom would have maintained its predominant position and even have expanded to the north. But this must be very doubtful, for its abiding weakness was

¹ For the concern of the pre-entry Visigoths with Roman trade see Thompson, *Visigoths in the time of Ulfila*, pp. 14–16, 19–20, 34–43, who (p. 39) points out that Latin had already made its mark on the Gothic language by the middle of the fourth century, largely through the influence of traders.

² See Stroheker, *Eurich*, pp. 101–2, Levy, *Schriften*, pp. 202–3, 213.

³ See King, pp. 169–233.

⁴ Levy, *Schriften*, pp. 203–4, 218.

⁵ See C. Frh. von Schwerin, 'Notas sobre la hist. del derecho esp. más antiguo', *AHDE*, I (1924), 42ff., Levy, *Schriften*, pp. 204–6, and King, pp. 172–4. Not enough attention is paid to the influence of Germanic practice itself on the vulgar law: but see J. Gaudemet, *La formation du droit séculier et du droit de l'église aux IV^e et V^e siècles* (Paris, 1957), pp. 130–1, and Levy, *Schriften*, pp. 173ff., 206ff., 216–17.

⁶ See E. Levy, *West Roman vulgar law. The law of property* (Philadelphia, 1951), pp. 125–6, and the comments of Sánchez-Albornoz, 'Pervivencia', pp. 167ff. Important as is the matter of the origin of those Germanic elements which appear in the law of the post-Visigothic period, it cannot be discussed here. Earlier literature will be found in E. Wohlhaupter, 'Das germanische Element im altspanischen Recht und die Rezeption des römischen Rechtes in Spanien', *ZRG.RA*, LXVI (1948), 135–210, and there is a useful account of the views of García Gallo and others in R. d'Abadal, 'À propos du legs visigothique en Esp.', *Sett.*, v (1958), 562–70.

⁷ G. Braga da Cruz, 'A sucessão legítima no código Euriciano', *AHDE*, xxiii (1953), 769, rightly speaks of the 'formação dum sistema sucessório deveras original': see also Levy, *Schriften*, p. 216, though differently d'Ors, *Código*, p. 248. I devote most of the last chapter of my dissertation to an examination of the striking contrasts between the provisions of the *CE* (and *Antiquae* of the *CR*) and those of the *CT/LRV* in the matters of succession and matrimonial property: these contrasts furnish the most powerful of arguments against both the territorialist theses.

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the disunity which Euric had done so much to foster.¹ A first price was to be paid in 507.² In the preceding years a formidable threat to the kingdom of Toulouse had arisen beyond the northern frontier. The expansionist policy of the Catholic Clovis menaced the Goths with what was allegedly proclaimed by the Franks as a holy war against the Arians.³ Negotiations failed, and Alaric II was obliged eventually to take up arms. Gregory of Tours reports much sympathy for the Franks in the period before hostilities broke out,⁴ and the Catholic bishops in particular seem to have been inspired to treasonable activity. Caesarius, bishop of Arles and acknowledged leader of the Church, was exiled on the grounds of conspiracy to deliver his city to the Burgundians, allies of Clovis, and other bishops suffered a similar fate for similar behaviour.⁵ But in 506 Alaric changed his tune. In September Caesarius presided over the first-ever assembly of the Catholic clergy of the kingdom, the Council of Agde,⁶ and just seven months previously the king had published for the use of the native Romans the *Lex Romana Visigothorum*, or Breviary, a code wholly Roman in content and consisting of a series of texts – many of them accompanied by explanatory *Interpretationes*, themselves the work of an earlier age – taken from the *Codex Theodosianus*, from later Novels and from certain juristic works, notably those of Paulus and Gaius.⁷ The Breviary was to remain in force in the Visigothic kingdom for nearly 150 years and to exercise an enormous influence outside its confines.⁸ Both the circumstances

¹ Only two revolts, both in Spain, are known from this period, however (*Chron. Caesaraug. reliquiae* ad aa. 496, 497, 506), and the Burdunelus who figured in the first may be thought, from his name, to have been a Goth.

² For the following see E. F. Bruck, 'Caesarius of Arles and the *Lex Romana Visigothorum*', *Studi in onore di Vincenzo Arangio-Ruiz*, 1 (Naples, 1953), 201–17. Wholly different is the view of Schäferdiek, pp. 32–55.

³ In *HF* II. 37 Clovis is alleged to have declared: 'Valde molestum fero, quod hi Arriani partem teneant Galliarum'.

⁴ *HF* II. 35.

⁵ See Schmidt, *Gesch.*, p. 274, Courcelle, p. 241. But note now the comments of Schäferdiek, pp. 34–9.

⁶ On the council see Schäferdiek, pp. 55–67.

⁷ On all aspects of the *LRV* see J. Gaudemet, *Le Bréviaire d'Alaric et les Epitome*, IRMAE, part 1, 2b aa β (Milan, 1965), *passim*.

⁸ For possible references to the *LRV* in the seventh-century councils, see A. Larraona and A. Tabera, 'El derecho justiniano en Esp.', *Atti del Congresso Internazionale di Diritto Romano, Bologna II* (Pavia, 1935), pp. 96, 106 with n. 77. The references are wrongly denied by García Gallo, 'Nacionalidad', pp. 235–41: see Schultz,